

Selected Documents from Claim File

Claim No. LRF-1998-0522-01

CLAIM PAYMENT CHECKLIST

To be used for claims arising prior to 07/01/98

I. General Information

LRF Claim No: <u>1998-0522-01</u>	Related Claim Nos: <u>None</u>
1. Claimant: Name: <u>BMC WEST BUILDING PRODUCTS</u> Address: <u>117 SOUTH 1600 WEST</u> City, State, Zip: <u>OREM UT 84058</u> Telephone: <u>(801) 224-0541</u> DOPL/LRF No: <u>312675</u>	
2. Claimant's Legal Counsel: Name/Law Firm: <u>HOWARD CHUNTZ</u> Address: <u>1149 WEST CENTER ST</u> City, State, Zip: <u>OREM UT 84057</u> Telephone: <u>(801) 222-9700</u>	
3. Non-Paying Party/Permissive Party: (Entered Appearance <u>Yes</u> <input checked="" type="checkbox"/> <u>No</u>) Name: <u>FALCON BUILDERS</u> Address: <u>459 WEST 2600 NORTH</u> City, State, Zip: <u>LEHI UT 84043</u> Telephone: _____ DOPL No: <u>313725</u>	
4. Non-Paying Party/Permissive Party's Legal Counsel: Name/Law Firm: <u>N/A</u> Address: <u>N/A</u> City, State, Zip: <u>N/A</u> Telephone: <u>N/A</u>	
5. Original Contractor: Name: <u>FALCON BUILDERS</u> Address: <u>459 WEST 2600 NORTH</u> City, State, Zip: <u>LEHI UT 84043</u> Telephone: _____ DOPL No: <u>313725</u>	
6. Amount claimed: <u>\$14,605.74</u>	
7. Owner: Name: <u>JAY D ADAMS</u> Address: <u>2546 NORTH 670 WEST</u> City, State, Zip: <u>LEHI UT 84043</u> Telephone: _____	

8. Subsequent Owner: _____ Date: _____	
Name: _____ N/A _____	
Address: _____ N/A _____	
City, State, Zip: _____ N/A _____	
Telephone: _____ N/A _____	
9. Owner-Occupied Residence:	
Address/Location: <u>2546 NORTH 670 WEST LEHI UT 84043</u>	
Legal Description: <u>All Of Lot 137, Plat "C", Pioneer Estates Subdivision</u>	
10. Claim Classification: _____ Formal <u>X</u> Informal	

II. Claim Processing Information

Initial Claim Processing -- All Claims:	Received	Forwarded
Front Desk	05/22/98	n/a
LRF Specialist--set up file, notice of filing, CRIS entry	n/a	05/29/98
Permissive Party response Deadline: <u>06/29/98</u>	05/29/98	n/a
LRF Specialist/Claims Examiner--screening, c/d letter Reason(s) for conditional denial: <u>n/a</u>	05/29/98	08/03/98
LRF Coordinator/Claims Examiner--review	08/03/98	08/04/98
Claimant--response to c/d letter Deadline: _____	n/a	n/a
LRF Coordinator/Claims Examiner--substantive review, c/d letter, or recommendation and disposition letter(s). Reason(s) for conditional denial: _____	n/a	n/a
Claimant response to c/d letter Deadline: _____	n/a	n/a
LRF Coordinator/Claims Examiner--review	08/04/98	<u>8/4/98</u>
Section's Recommended Disposition --ALL CLAIMS:		
___ Approve for full payment ___ Approve for partial payment <u>X</u> Deny ___ Dismiss		
Date: <u>08/04/98</u>		
Reason(s): <u>Claim was not timely filed.</u>		

Board's Recommended Disposition -- INFORMAL CLAIM:

☐ Approve for full payment ☐ Approve for partial payment ☐ Deny ☐ Dismiss

Date: N/A

Reason(s): N/A - summary denial

FINAL ORDER -- ALL CLAIMS:

☐ Approve for full payment ☐ Approve for partial payment ☒ Deny ☐ Dismiss

Date: _____

Reason(s): Claim not timely filed.

If Order is fully or partially denied:

Reason(s) for denial: Claim not timely filed; filed 179 days after entry of civil judgment.

Appeal deadline: 09/04/98

Date request for agency review filed: 08/14/98

Date/Nature of Order: affirmed 09/17/8

III. Jurisdiction Checklist

Y/N	Inits	Date	Issue
NO	ljb	08/04/98	Is Application Jurisdictionally Sound?
YES	ljb	05/04/98	<p>A. Claimant brought civil action against the non-paying party within 180 days from the last day claimant provided qualified services, which action was to recover monies owed him for the services, or was precluded from doing so by the non-paying party's bankruptcy filing within 180 days of claimant's completion of qualified services.</p> <p>(38-11-204(3)(d)(i)(A) and (iv).</p> <p><u>Claimant states that it provided services from 02/28/97 through 05/03/97. (Claim file p. 2) Claimant has not submitted any invoices to corroborate this statement. (Claim file as of 08/04/98.) Claimant's complaint was dated on 09/22/97, but is not date stamped by the court. (Claim file pp. 23-27) Claimant, however, states that the complaint was filed on September 25, 1997, which date I corroborated by consulting the Fourth District Court. (Claim file p. 3) Assuming that claimant's stated dates of qualified services can be corroborated, the relevant period of time is between 05/03/97 and 09/25/97, 145 days. 145 days is less than the 180 day statutory period so, assuming that the service date can be corroborated, the civil action was timely filed.</u></p>

YES	ljb	08/04/98	<p>B. If civil action filing is required, notice of commencement of action was timely filed within 30 days of claimant's filing of civil action. (38-11-204(3)(d)(i)(B))</p> <p><u>The civil action was filed on 09/25/97. Claimant stated that his Notice of Commencement of Action was filed on 10/14/97, but has not provided a copy of his Notice. (Claim file as of 08/04/98) LRF records, however, corroborate this date. (NCA log) The NCA was, therefore, filed 19 days after the civil action filing, within the 30 day statutory period.</u></p>
NO	ljb	08/04/98	<p>C. Claim application was timely filed within 120 days of the civil judgment or bankruptcy filing. (38-11-204(2)).</p> <p><u>Claimant's default and default judgment was entered on 11/24/97. (4th District Court Clerk) The present claim was filed on 05/22/98. (LRF records) The present claim was, therefore, filed 179 days after the entry of the judgment, outside of the 120 day statutory period. The claim was, therefore, not timely filed and the division does not have jurisdiction to pay it.</u></p>

VIII. Demographic Data

Source: Claimant's Demographic Questionnaire.

1. Type of business entity used by claimant: ___ Sole Proprietorship ___ Partnership ___ Joint Venture <u> X </u> Corporation ___ LLC ___ Other	
2. Number of employees employed by claimant: ___ None ___ 1-4 ___ 5-9 ___ 10-19 ___ 20-49 ___ 50-99 <u> X </u> 100+	
3. Claimant's gross annual revenue: ___ 0-\$9,000 ___ \$10,000-\$49,000 ___ \$50,000-\$99,000 ___ \$100,000-\$249,000 <u> X </u> \$250,000-\$499,000 ___ \$500,000-\$999,000 ___ \$1,000,000-\$4,999,000 ___ \$5,000,000+	
4. Number of years claimant has been in business: ___ 0-1 ___ 2-4 ___ 5-9 ___ 10-14 <u> X </u> 15-19 ___ 20+	
5. Capacity in which claimant is claiming: ___ General Contractor <u> X </u> Subcontractor ___ Supplier ___ Other _____	
6. Is claimant licensed through DOPL? <u> X </u> yes ___ no	

<p>7. Type of business entity used by non-paying contractor or real estate developer, if known:</p> <p><input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Joint Venture <input type="checkbox"/> Corporation <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Unknown</p>
<p>8. Number of employees employed by non-paying party, if known:</p> <p><input type="checkbox"/> None <input type="checkbox"/> 1-4 <input type="checkbox"/> 5-9 <input type="checkbox"/> 10-19 <input type="checkbox"/> 20-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100+ <input checked="" type="checkbox"/> Unknown</p>
<p>9. Non-paying party's gross annual revenue, if known:</p> <p><input type="checkbox"/> 0-\$9,000 <input type="checkbox"/> \$10,000-\$49,000 <input type="checkbox"/> \$50,000-\$99,000 <input type="checkbox"/> \$100,000-\$249,000</p> <p><input type="checkbox"/> \$250,000-\$499,000 <input type="checkbox"/> \$500,000-\$999,000 <input type="checkbox"/> \$1,000,000-\$4,999,000 <input type="checkbox"/> \$5,000,000+</p> <p><input checked="" type="checkbox"/> Unknown</p>
<p>10. Number of years non-paying party has been in business, if known:</p> <p><input type="checkbox"/> 0-1 <input type="checkbox"/> 2-4 <input type="checkbox"/> 5-9 <input type="checkbox"/> 10-14 <input type="checkbox"/> 15-19 <input type="checkbox"/> 20+ <input checked="" type="checkbox"/> Unknown</p>
<p>11. Is non-paying party licensed through DOPL? <input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> Unknown</p>

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State of Utah

DEPARTMENT OF COMMERCE

DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

Michael O. Leavitt
Governor

Douglas C. Borba
Executive Director

J. Craig Jackson, R. Ph.
Division Director

Heber M. Wells Building
160 East 300 South, P.O. Box 146741
Salt Lake City, Utah 84114-6741
(801) 530-6628 Fax: (801) 530-6511
Investigations Fax: (801) 530-6301
<http://www.commerce.state.ut.us/web/commerce/dopl/dopl1.htm>

August 4, 1998

BMC WEST BUILDING PRODUCTS
117 SOUTH 1600 WEST
OREM UT 84058

RE: Lien Recovery Fund Claim No. 1998-0522-01

Claimant:	BMC WEST BUILDING PRODUCTS
Original Contractor:	FALCON BUILDERS
Non-paying Party:	FALCON BUILDERS
Homeowner:	JAY D. ADAMS

Dear Claimant:

DENIAL OF CLAIM

After review of the above-referenced claim application by the Division of Occupational and Professional Licensing and the Lien Recovery Fund Advisory Board, your claim with the Residence Lien Recovery Fund is denied for the following reason:

The evidence submitted indicates that claimant BMC West Building Products failed to file its claim application with the Residence Lien Recovery Fund within 120 days from the date that judgment was entered in its civil action against Falcon Builders.

To qualify for payment of a claim, UTAH CODE ANN. § 38-11-204(2) (1996) requires a claimant to file an application with the fund no later than 120 days from the date that judgment is entered in a civil action against the non-paying party, or if precluded by bankruptcy, no later than 120 days from the date the non-paying party filed bankruptcy.

In this case, your application was filed on May 22, 1998, which is 179 days from the date the judgment was filed in your civil action against Falcon Builders. As a result, the Division has no jurisdiction over this matter and, therefore, cannot pay this claim.

CHALLENGE AFTER DENIAL OF CLAIM:

Under the terms of R156-46b-202(j), Utah Administrative Code, your claim has been classified by the Division as an informal proceeding. You may challenge the denial of your claim by filing a request for agency review.

If you choose to file a request for agency review, you must follow the attached procedures.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Craig Jackson", written over a horizontal line.

J. Craig Jackson

Director, Division of Occupational and Professional Licensing

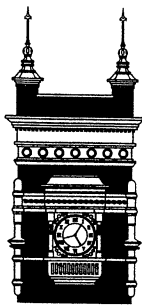
i:\home\dopl\claims\98052002.den

cc: Howard Chuntz
1149 West Center St.
Orem, UT 84057

Falcon Builders
459 West 2600 North
Lehi, UT 84043

1149 WEST CENTER STREET

OREM, UTAH 84057



PHONE: 222-9700 FAX: 224-9960

SALT LAKE CITY: 328-2240

RECEIVED

DR. HOWARD CHUNTZ

ATTORNEY AT LAW

August 12, 1998

UTAH DEPT. OF
COMMERCE

Douglas C. Borba, Executive Director
Utah Department of Commerce
160 East 300 South
P.O. Box 146701
Salt Lake City, UT 84114-6701

RE: Lien Recovery Fund Claim No. 1998-0522-01
Claimant: BMC West Building Products
Original Contractor: Falcon Builders
Non-paying Party: Falcon Builders
Homeowner: Jay D. Adams

Dear Mr. Borba:

REQUEST FOR AGENCY REVIEW

BMC West Building Products submits its request for agency review in the above captioned matter on the basis that the requirement that the filing of claim within 120 days from the date that judgment was entered is procedural and not jurisdictional and that extenuating circumstances often make it impossible to comply with said requirement.

Claims for payment by sub-contractors and materialmen often start with the filing of a mechanic's lien. Prior to timely commencement of a lawsuit against the owner and contractor, the sub-contractor and/or materialmen has no idea whether his collection action will end up with the Residence Lien Recovery Fund because he has no idea whether the owner has paid the contractor in full or has met the other requirements of the Act. After service of summons and complaint upon the contractor and the owner, the owner and/or his attorney generally contacts counsel for the sub-contractor/materialmen to advise that the action is covered by the Residence Lien Recovery Act. But often does not provide complete or timely documentation to support that fact. In the meantime, the contractor generally fails to answer the complaint and a default judgment is entered against the contractor so that other real property that said contractor may have an interest in might be tied up and available for payment of the debt.

It is not unusual that it takes the homeowner several months to acquire all of the appropriate documentation to support his position that he is covered by the Residence Lien Recovery Act and that after several communications between the sub-contractor/materialmen's attorney and counsel for the homeowner. That was the situation that occurred with BMC West Building Products, Falcon Builders, and the homeowner, Jay D. Adams. In addition, the matter

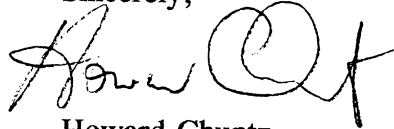
August 12, 1998
Page 2

was further delayed by the fact that the member partners of the contractor Falcon Builders, LLC, filed Chapter 13 Bankruptcies and were not available for supplemental proceedings with respect to the limited liability company for several months. The limited liability company itself, Falcon Builders, LLC, did not file a bankruptcy and, therefore, the bankruptcy provisions of the Act, did not apply in this case.

BMC West Building Products was precluded by the facts and circumstances that existed in this matter from knowing that it had a lien recovery fund claim to make rather than against the owner for several months and then could not make its claim because of delays in obtaining the supplemental proceedings against the contractor because its members were in bankruptcy.

Wherefore, claimant requests that the 120 day filing requirement be waived and that its claim be approved.

Sincerely,



Howard Chuntz
Attorney for Claimant

MAILING CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed, postage prepaid, this 13th day of August, 1998, to the following:

Falcon Builders
459 West 2600 North
Lehi, UT 84043

BMC West Building Products
117 South 1600 West
Orem, UT 84058



re req

BEFORE THE
DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE REQUEST
FOR AGENCY REVIEW OF
BMC WEST BUILDING PRODUCTS

:
:
:
:

ORDER ON REVIEW

DOPL Case No. LRF-1998-0522-01

INTRODUCTION

This matter comes before the Executive Director on the request of the Petitioner, BMC West Building Products (hereafter "Petitioner"), for agency review of the denial of its claim against the lien recovery fund by the Division of Occupational and Professional Licensing (hereafter "Division").

STATUTES OR RULES PERMITTING OR REQUIRING REVIEW

Agency review of the Division's decision is conducted pursuant to Section 63-46b-12, Utah Code Annotated, and Rule R151-46b-12 of the Utah Administrative Code.

ISSUES REVIEWED

1. Whether the requirement of filing a claim within 120 days of judgment is jurisdictional; and if so

Executive Director, in reading the plain language of the statute, can find no comfort for Petitioner's position or any reason to believe that the legislature did not intend that its requirement be considered jurisdictional as appears from the clear and unambiguous language of the statute.

3. Although not absolutely conclusive, the legislative use of the mandatory "shall" in its requirement indicates that the 120 day requirement was more than a suggested benchmark to aim for in making claims against the fund. This reading is bolstered by the remaining portion of the pertinent sentence providing that the claim be filed "no later than" the stated deadline set by the legislature. The Executive Director is of the opinion that the filing of a claim within 120 days of obtaining the requisite judgment, or of the defaulting party filing bankruptcy, is mandatory and jurisdictional and incapable of being waived absent a showing of good cause.

4. Petitioner alleged that extenuating circumstances existed in this case which made it impossible for Petitioner to make a timely filing of its claim against the lien recovery fund. Petitioner speaks in generalities of potential problems which could arise delaying the filing of a claim against the fund, but all of the vague general excuses and those specific to this claim are unconvincing to the Executive Director. The majority of the delays alleged by Petitioner involve problems with getting the case to court which would have occurred prior to filing suit and obtaining the requisite judgment, and are therefore irrelevant and not an excuse for Petitioner's inaction in pursuing its claim after entry of the judgment against the non-paying party.

5. Petitioner alleged that it was delayed in its filing of supplemental proceedings following entry of the judgment due to members of the defaulting L.L.C. having filed for bankruptcy protection. Petitioner admits in its request for review that the defaulting corporation did not file for bankruptcy protection so the Executive Director is unable to understand what prevented Petitioner from obtaining a court order for the requisite judgment creditor's bill of

NOTICE OF RIGHT TO APPEAL

Judicial review of this Order may be obtained by filing a Petition for Review with the District Court within 30 days after the issuance of this Order on Review. Any Petition for Review must comply with the requirements of Sections 63-46b-14 and 63-46b-15, Utah Code Annotated.


CERTIFICATE OF MAILING

I certify that on the 17~~th~~ day of September, 1998, the undersigned mailed a true and correct copy of the foregoing Order on Review by certified mail, properly addressed, postage prepaid, to:

Howard Chuntz, Esq.
Attorney at Law
1149 West Center Street
Orem UT 84057
ATTORNEY FOR BMC West Building Products.

and caused a copy to be hand-delivered to:

J. Craig Jackson, Director
Division of Occupational and Professional Licensing
160 East 300 South
Salt Lake City, Utah 84111



MICHAEL R. MEDLEY, Department Counsel
Utah Department of Commerce

134760

DATE SERVED 1525 12-10-98

DEPUTY Fedd
CONSTABLE A. R. FERNLUND 374-8018

Howard Chuntz, No. 4208
Attorney for Petitioner
1149 West Center Street
Orem, Utah 84057
Telephone: (801) 222-9700

RECEIVED
DEC 10 1998
DIVISION OF OCCUPATIONAL
& PROFESSIONAL LICENSING

IN THE FOURTH JUDICIAL DISTRICT COURT
COUNTY OF UTAH, STATE OF UTAH

BMC WEST BUILDING PRODUCTS,

Plaintiff,

SUMMONS

v.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING, JAY D.
ADAMS, LISA ADAMS, FALCON
BUILDERS, LLC,, and DOES 1 through
25,

Civil No. _____

Defendants.

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of the above Court at 125 North 100 West, Provo, Utah 84603, a written answer to the attached Petition for Judicial Review and to serve upon or mail to the plaintiff's attorney, at the address shown above, a copy of your answer within twenty days after service of this Summons upon you.

If you fail to so answer, judgment by default will be taken against you for the relief demanded in the Petition which has been filed with the Clerk of the above Court and a copy of which is attached and herewith served upon you.

DATED November 30, 1998.

Serve defendant at:
Division of Occupational &
Professional Licensing
J. Craig Jackson, Director
160 East 300 South, SLC, UT 84111


Howard Chuntz
Attorney for Plaintiff

Howard Chuntz, No. 4208
Attorney for Petitioner
1149 West Center Street
Orem, Utah 84057
Telephone: (801) 222-9700

IN THE FOURTH JUDICIAL DISTRICT COURT
COUNTY OF UTAH, STATE OF UTAH

BMC WEST BUILDING PRODUCTS,

Plaintiff,

PETITION FOR
JUDICIAL REVIEW

v.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING, JAY D.
ADAMS, LISA ADAMS, FALCON
BUILDERS, LLC., and DOES 1 through
25,

Civil No. 98-0465-983AA

petition filed on 10/19/98
Case filed on 10/20/98

Defendants.

COMES NOW petitioner in the above captioned matter, by and through its attorney, Howard Chuntz, and petitions the Court for judicial review of the Order on Review issued by the Division of Occupational & Professional Licensing (hereafter Division) as follows:

1. Petitioner is BMC West Building Products and its mailing address is P.O. Box 467, Orem, Utah 84057-0467.
2. Venue is proper in Utah County because that is where petitioner maintains its principal place of business.
3. The respondent agency is the Division of Occupational & Professional Licensing, c/o J. Craig Jackson, Director, 160 East 300 South, Salt Lake City, Utah 84111.
4. The title and date of the final agency action to be reviewed is an Order on Review in case DOPL Case No. LRF-1998-0522-01, dated September 17, 1998, (a copy of which is attached hereto as Exhibit "A").
5. The persons who are parties in the informal judicative proceedings that led

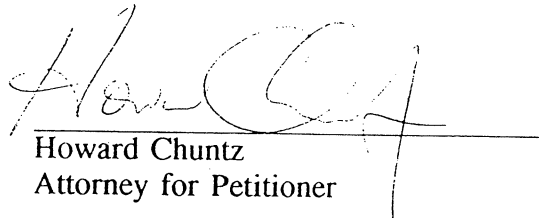
to the agency action are those named in the caption to this matter, as well as the Division.

6. Petitioner filed a Lien Recovery Fund Claim May 22, 1998.
7. The Division denied petitioner's claim on August 4, 1998.
8. Petitioner filed a Request for Agency Review on or about August 13, 1998.
9. The Division denied petitioner's claim on its Order on Review dated September 17, 1998.

10. Petitioner is entitled to relief for reasons more specifically set forth in his Request for Agency Review submitted herewith as Exhibit "B".

WHEREFORE, petitioner prays that the Division's denial of its claim be reversed and that the Division be required to pay petitioner the sums requested in its claim.

DATED October 16, 1998.


Howard Chuntz
Attorney for Petitioner

re pet

TONY R. PATTERSON #5128
Assistant Attorney General
JAN GRAHAM #1231
Attorney General
Heber M. Wells Bldg.
160 East 300 South, 5th Floor
Salt Lake City, Utah 84111
Telephone: (801) 366-0310

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

BMC WEST BUILDING PRODUCTS,)	
)	
Petitioner,)	ANSWER OF THE DIVISION OF
)	OCCUPATIONAL & PROFESSIONAL
vs.)	LICENSING
)	
STATE OF UTAH DIVISION OF)	
OCCUPATIONAL AND PROFESSIONAL)	
LICENSING, JAY D. ADAMS, LISA)	Civil No. 980405983AA
ADAMS, FALCON BUILDERS, LLC.,)	
AND DOES 1 THROUGH 25,)	Judge
)	
Respondents.)	

The State of Utah Division of Occupational and
Professional Licensing, Respondent, through Tony R. Patterson,
Assistant Attorney General, Answers as follows:

FIRST DEFENSE

1. The Petitioner failed to file its claim with the
Residence Lien Restriction and Lien Recovery Fund (hereinafter

Fund) within 120 days of the judgment as required by Utah Code Annotated Section 38-11-204(2)(a). Petitioner filed its Application with the Fund on May 22, 1998. See Exhibit "A" Petitioner stated in its Application to the Fund that its judgment against Falcon Builders was obtained on November 24, 1997, in Case No. 970002698 Fourth District Court, Division II, County of Utah, Provo Department, State of Utah. Petitioner intended the Fund to rely upon that judgment in considering its application. In an effort to accomplish that intent, the Petitioner attached a copy of that judgment to its application. See Exhibit "B"

2. An Affidavit, Certification and Release Authorization was filed by Petitioner with its Application where it states that "To the best of my knowledge, the information contained in this application and the supporting document(s) are free from fraud, misrepresentation, or omission of material fact." However, the Petitioner failed to have this affidavit signed and notarized.

3. Petitioner is precluded from having the Fund consider its claim because Petitioner filed its claim 179 days after its judgment, fifty-nine days past the 120 days imposed by law.

SECOND DEFENSE

4. The statutory requirement to file an application found in 38-11-204(2) is Jurisdictional. Petitioner failed to file its claim in the time required by law and is therefore barred from recovering from the Fund.

THIRD DEFENSE

5. Paragraphs 1,2,3,6, and 7 of the Petition are admitted.

6. Paragraph 4 of the Petition is denied as a copy of the Order was not provided. It is admitted that the Department of Commerce issued an order dated September 17, 1998, in DOPL Case No. LRF-1998-0522-01 which is a final agency action.

7. Paragraph 5 of the Petition is denied. The Division and the Petitioner are the only parties to the action below.

8. Paragraph 8 is denied. Petitioner did file a Request for Agency Review with the Department of Commerce sometime after August 13, 1998.

9. Paragraph 9 of the Petition is denied. It is admitted that the Department of Commerce denied the Petitioner's request for Agency action and upheld the Division's decision of denying the claim on the basis that the Petitioner had failed to file its application with the Fund within the 120 days from the date it received a judgment.

10. Paragraph 10 of the Petition is denied.
Respondent failed to provide a copy of "Exhibit B".

FOURTH DEFENSE

11. The Petitioner has failed to establish, by the preponderance of the evidence, that it has met all of the requirements of Utah Code Annotated Section 38-11-204.

FIFTH DEFENSE

12. The Petition fails to comply with the provisions of Utah Code Annotated Section 63-46b-15(2)(a)(vi)-(viii).

SIXTH DEFENSE

13. The Complaint fails to state a claim upon which relief can be granted.

SEVENTH DEFENSE

14. The Division denies each and every allegation of the Petition that they have not heretofore specifically admitted or denied.

WHEREFORE, the Division request that the court affirm the decision of the Division by denying Petitioner's application due to its failure to submit its application within 120 days as required by law.

DATED this 28 day of December, 1998.



TONY R. PATTERSON
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December, 1998, I mailed a true and exact copy of the foregoing Answer of the State of Utah, postage prepaid, to the following:

Howard Chuntz
Attorney for Petitioner
1149 West Center Street
Orem, Utah 84057

Shawn Burnett

98-0522-01

Tony R. Patterson, #5128
Assistant Attorney General
Jan Graham, #1321
Attorney General
Attorneys for the State of Utah
160 East 300 South, 5th Floor
Salt Lake City, Utah 84111
Telephone: (801) 366-0310
Facsimile: (801) 366-0315

IN THE FOURTH JUDICIAL DISTRICT COURT, PROVO DEPARTMENT

UTAH COUNTY, STATE OF UTAH

BMC WEST BUILDING PRODUCTS,
Plaintiff,

vs.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING, ET AL.
Defendant.

REQUEST FOR RULING

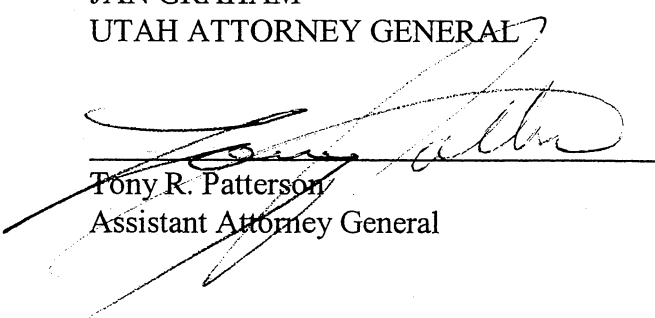
Case No. 98-0406745
98-0406746

Judge J. Harding

The Division of Professional Licensing of the Department of Commerce of the State of Utah ("Division"), by and through its counsel, Tony R. Patterson, Assistant Attorney General, hereby request this court rule on Plaintiff's Motion to Dismiss, filed 1/24/00.

DATED this 14 day of August, 2000.

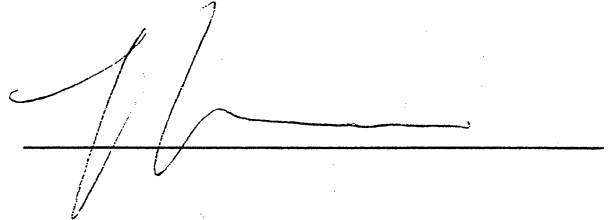
JAN GRAHAM
UTAH ATTORNEY GENERAL


Tony R. Patterson
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that on August 14, 2000, I mailed, postage prepaid, a true and exact copy of the foregoing **Request for Ruling** to:

Howard Chuntz
1149 West Center Street
Orem, Utah 84057

A handwritten signature in dark ink, appearing to be 'H. Chuntz', is written over a horizontal line.

cc: Earl Webster, DOPL